IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

MFA.No. 1176 of 2000()

OPMV.926/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:

GEORGE, S/O. CHAKKUNNI, AGED 41,
PATTATHU HOUSE, AVITTATHOOR DESOM,
KADUPPISSERY VILLAGE,
MUKUNDAPURAM TALUK.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS:
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1. P.P. GEROGE, S/O.POULOSE,
PUTHOLIPARAMBIL HOUSE,
KOMBODINJAMMAKKAL P.O.

2. POULOSE, S/O. LONAPPAN,
KANNOOKKADAN HOUSE, IRINJALAKUDA.

3. UNITED INDIA INSURANCE CO. LTD,
IRINJALAKUDA.

R3 BY ADV. SRI.PMM.NAJEEB KHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 16/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1176 of 2000

Dated this 16th day of October, 2007

JUDGMENT

Koshy,J:

Appellant-claimant suffered serious injuries in a motor accident. He claimed compensation of Rs.1,50,000/-. The Tribunal found that the accident occurred due to negligence of the driver of offending vehicle, the 2nd respondent. First respondent was the registered owner of the Car. The vehicle was insured by 4th respondent Insurance company. However, only an amount of Rs.69545/- was granted. Only quantum of compensation is disputed in the appeal. With regard to the injuries, the Tribunal discussed the matter as follows:

> "Ext.A7 is the copy of the wound certificate issued from West Fort Hospital, Thrissur wherein it is noted that the petitioner sustained multiple lacerated wounds right knee, left knee, face and mobility of 2 teeth on the upper jaw. It is also noted therein that X-ray revealed comminuted fracture both bones of right leg junction of upper 1/3rd, middle 1/3rd and fracture tibial spine (R) and was treated as inpatient from 12.10.93 to 23.10.93. Ext.A8 series (3 nos) are the discharge summaries issued from the West Fort Hospital, Thrissur wherein it is noted that the petitioner sustained fracture proximal 3rd to tibial with laceration

> to right knee, and was treated as inpatient from 12.10.93 to 23.10.93, 30.11.93 to 2.12.93 and from 25.3.94 to 28.3.94. Ext.A9 is the disability certificate issued by Dr.Jose Kurian Kattukaran on 18.3.98 wherein it is certified that the petitioner is having 20 bowing anterior right tibia, swelling right leg, limitation of movement to right knee, right ankle, early osteoarthritis changes in right knee, shortening of right leg, mal united fracture of both bones of right leg, difficulty to squat or to climb tree or to walk speedily or run or to stand for prolonged period."

2. Permanent disability was assessed at 27%. The doctor who issued the above certificate was also examined as PW1. He deposed that there will be difficulty to the petitioner to squat, to move around, to climb trees and to stand for prolonged time and will have difficulty to ambulate freely due oesteo-arthritis and difficulty to flex and extend the knee. The movement of the knee will be painful and difficulty to freely fully ambulate which will affect the right lower limb i.e. hip joint, ankle joint etc. It is also deposed by PW1 in the cross-examination made by the learned counsel appearing for 4th respondent that the petitioner will not be able to climb trees. Nothing has been elicited in the cross examination of PW1 to disbelieve his evidence and to discard Ext.A9 as a whole. Considering the nature of disabilities, evidence of PW1, disability certificate, we are of the opinion that

compensation can be granted taking at least 20% disability. According to the claimant, his monthly income was Rs.2500/-. As monthly income was not proved by acceptable evidence, Rs.1250/- is fixed as notional income payable. He is not a non-earning person. He is aged 35 at the time of accident and he was maintaining a family. Even if he gets at least 20 days work in a month with 100 rupees per day he will get Rs.2000/- and this ought to have been taken as the monthly income. So, the compensation for 20% disability is Rs.76800/- (2000 x12 x20/100 x 16). The Tribunal has granted only Rs.36,000/- for disability. So, the claimant is entitled to additional compensation of Rs.40800/- for disability and loss of earning capacity. The Tribunal has also granted Rs.5000/- as compensation for loss of earnings during the period of treatment for four months. Since we have increased the income to Rs.2000/- from Rs.1500/-, he is entitled to an amount of Rs.8000/- under that account. Here, additional amount payable on this count will be Rs. 3000/-. Hence, total additional compensation payable will be Rs.43,800/-. We are of the opinion that just and reasonable compensation was awarded under other heads. Hence, additional compensation of Rs.43800/- should be deposited by the 4th respondent Insurance company with 7.5% interest from the date of application till its deposit over and above the

amount decreed by the Tribunal. On deposit, the claimant is entitled to withdraw the same.

Appeal is partly allowed.

J.B. KOSHY, JUDGE.

K. HEMA, JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A. No. 1176 of 2000

Dated this 16th day of October, 2007

JUDGMENT